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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

MARIA A. GARCIA, individually and
on behalf of herself and others similarly
situated,

Plaintiffs,

vs.

QUEST GROUP CONSULTING LLC, a
Georgia limited liability company;
QUEST GROUP SEARCH, LLC, a
Georgia limited liability company;
DOUGLAS SHAENER, an individual;
JASON HANGES, an individual; and
DOES 1 through 50 inclusive

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/25/2021 at 12:05:57 PM

Clerk of the Superior Court
By Erika Engel, Deputy Clerk

Case No.: 37-2021-00045487-CU-OE-CTL

**PLAINTIFFS' REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. PAGA Claim for Failure to Pay State Minimum/Regular Wages;
2. PAGA Claim for Failure to Pay State Overtime Wages;
3. PAGA Claim for Failure to Timely Pay Wages;
4. PAGA Claim for Meal and Rest Break Labor Code Violations;
5. PAGA Claim for Inaccurate Wage Statements;
6. PAGA Claim for Failure to Maintain Payroll Records;
7. PAGA Claim for Failure to Reimburse Business Expenses in Violation of California Labor Code § 2802;
8. PAGA Claim for miscellaneous Labor Code Violations;
9. Individual Claim for Violations of the California Investigative Consumer Reporting Agencies Act (Civ. Code, § 1786, *et seq.*); and
10. PAGA Claim for failure to provide seating.

1 Plaintiff MARIA A. GARCIA, on behalf of herself and acting for the interests
2 of other current and former employees (cumulatively “Plaintiffs” or “Aggrieved
3 Employees”) allege the following:

4 **NATURE OF THE ACTION**

5 1. Plaintiff GARCIA files this action because Defendants procured an
6 investigative consumer report regarding Plaintiff after requiring Plaintiff, a job
7 applicant, at the time, to sign an unlawful disclosure form whereupon Defendants
8 procured a consumer investigative report on the Plaintiff, which form violated the
9 Investigative Consumer Reporting Agencies Act (the “ICRAA”) under Cal. Civ. Code
10 § 1786, *et seq.* because the form: (1) failed to provide a clear and conspicuous
11 disclosure; and (2) failed to comply with § 1786, *et seq.*

12 2. Pursuant to Labor Code Private Attorney General Act (“PAGA”), §§
13 2698, 2699 of the California Labor Code, Plaintiffs also bring this representative
14 action against Defendants for violations of the California Labor Code and the
15 Industrial Welfare Commission Wage Orders (the “IWC Wage Orders”).

16 3. In connection with Plaintiffs’ PAGA claims, Plaintiffs seek only PAGA
17 civil penalties (no wages and no individualized relief except for the named the
18 Plaintiff), reasonable attorneys’ fees, and costs within the meaning of *Esparza v. KS*
19 *Indus., L.P.* (2017) 13 Cal.App.5th 1228.

20 **JURISDICTION AND VENUE**

21 4. Pursuant to Article VI, § 10 of the California Constitution, subject matter
22 jurisdiction is proper in the Superior Court of California, County of San Diego, State
23 of California because Plaintiffs allege claims arising under California law.

24 5. This Court has jurisdiction over the Defendants because each is an
25 association, corporation, business entity, or individual that conducts substantial
26 business in the State of California, County of Sacramento.

27 6. Pursuant to § 395 of the California Code of Civil Procedure, venue is
28 proper in the Superior Court of California for the County of San Diego because

1 Defendant QUEST GROUP CONSULTING LLC is a Georgia limited liability
2 company unlawfully (it is unregistered with the California Secretary of State) doing
3 business in California and which entity's lack of records with the California Secretary
4 of State does not indicate where it maintains its headquarters in California.

5 **THE PARTIES**

6 7. Plaintiff MARIA A. GARCIA is an individual that resides in California.

7 8. Defendant QUEST GROUP CONSULTING LLC ("QUEST") is a
8 Georgia limited liability company unlawfully (it is unregistered with the California
9 Secretary of State) doing business in California.

10 9. Defendant QUEST GROUP SEARCH, LLC is a Georgia limited liability
11 company unlawfully (it is unregistered with the California Secretary of State) doing
12 business in California.

13 10. Defendant DOUGLAS SHAENER is an individual and during all times
14 relevant is and was the Managing Director of Defendant QUEST and, as such, this
15 Defendant is believed to be an "other person acting on behalf of an employer" within
16 the meaning of Labor Code §§ 558 and 558.1.

17 11. Defendant JASON HANGES is an individual and during all times
18 relevant is and was the Managing Director of Defendant QUEST and, as such, this
19 Defendant is believed to be an "other person acting on behalf of an employer" within
20 the meaning of Labor Code §§ 558 and 558.1.

21 12. The true names and capacities, whether individual, corporate, associate,
22 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
23 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious
24 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will
25 seek leave to amend this Complaint to allege the true names and capacities of DOES
26 1 through 50 when the correct identities are ascertained. Plaintiffs are informed and
27 believe, and based thereon allege, that each of the DOE Defendants is in some manner
28 liable to Plaintiffs for the events and actions alleged herein. All named Defendants

1 and DOES 1 through 50 are collectively referred to as “Defendants.”

2 13. Plaintiffs are informed and believe, and based thereon allege, that at all
3 times relevant herein each Defendant was acting as an agent, joint venture, or as an
4 integrated enterprise and/or alter ego for each of the other Defendants, and each was a
5 co-conspirator with respect to the acts and the wrongful conduct alleged herein, so
6 that each is responsible for the acts of the other in connection with the conspiracy and
7 in proximate connection with the other Defendants.

8 14. Plaintiffs are informed and believe, and based thereon allege, that each
9 Defendant was acting partly within and partly without the scope and course of their
10 employment, and was acting with the knowledge, permission, consent, and
11 ratification of every other Defendant.

12 15. Plaintiffs are informed and believe, and based thereon allege, that each
13 of the Defendants was an agent, managing general partner, managing member, owner,
14 co-owner, partner, employee, and/or representative of each of the Defendants, and
15 were at all times material hereto, acting within the purpose and scope of such agency,
16 employment, contract and/or representation, and that each of them are jointly and
17 severally liable to Plaintiffs and the Aggrieved Employees for the acts alleged herein

18 16. Plaintiffs are informed and believe, and based thereon allege, that each
19 of the Defendants are liable to Plaintiffs under legal theories and doctrines including
20 but not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4)
21 alter ego, based in part, on the facts set forth below.

22 17. Plaintiffs are informed and believe, and based thereon allege, that each
23 of the named Defendants are part of an integrated enterprise and have acted or
24 currently act as the employer and/or joint employer of Plaintiffs and Aggrieved
25 Employees, making each of them liable for the wage and hour violations alleged
26 herein.

27 **GENERAL ALLEGATIONS**

28 18. Defendants are temporary service employers withing the meaning of

1 Labor Code § 201.3(a)(1).

2 19. At all times relevant and within a year of this Complaint, Defendants
3 employed Plaintiff GARCIA and other Aggrieved Employees on an hourly basis as
4 non-exempt workers to perform work in California for various customers (other
5 entities).

6 20. Defendants paid Plaintiffs and Aggrieved Employees on an hourly basis
7 and considered them non-exempt.

8 21. Defendants employed Plaintiff as a youth care worker to supervise
9 unaccompanied migrant children who were temporarily housed in California.

10 22. The place where the children were being kept was a massive shelter to
11 house hundreds of migrant children, most of whom had arrived in the U. S. via the
12 southern border unaccompanied.

13 23. Plaintiff was employed by Defendants throughout the month of May
14 2021.

15 24. Before entering the workplace, Plaintiff was required to pass through a
16 screening for security and Covid symptoms, including temperature screening.

17 25. The time spent waiting in line for and submitting to screening was
18 compensable time for which Defendants failed to pay Plaintiff and similarly
19 Aggrieved Employees.

20 26. After completing the screening, Plaintiff and other employees were given
21 a wristband to indicate they had been cleared to enter.

22 27. The clock in station that recorded Plaintiff's time of arrival was located
23 inside the convention center, beyond the screening line.

24 28. Before being allowed to clock in, Plaintiff was required to spend time
25 under the control of Defendants waiting to be cleared.

26 29. Additionally, before being allowed to clock in, Plaintiff was required
27 periodically to submit to tests for Covid, as distinguished from the security check and
28 temperature screening that was required daily.

1 30. At the beginning of Plaintiff's workday, Defendants provided Plaintiff a
2 radio she was required to keep in her possession at all times.

3 31. Defendants required Plaintiff to listen and respond to radio calls at all
4 times, even during any purported periods of rest.

5 32. Defendants would contact Plaintiff on the radio, even during purported
6 periods of rest, and ask questions such as inquiring what the "count" was – i.e., what
7 was the number of children in a particular location, among other things.

8 33. Additionally, Defendants would contact Plaintiff even during purported
9 periods of rest and ask her to resume work when Defendants were short on staff.

10 34. Plaintiff was subject to reprimand if she did not respond to radio calls
11 during purported periods of rest.

12 35. Plaintiff's regular rate of pay exceeded \$28.34/hr., including wages of
13 \$28.34/hr. plus the pro rata value of meals and lodging.

14 36. Defendants calculated Plaintiff's overtime compensation based on an
15 erroneous regular rate of pay.

16 37. To the extent Defendants compensated Plaintiff with an overtime
17 premium, they paid Plaintiff at the rate of \$35.70 (1.5 x \$23.80) per overtime hour,
18 while Plaintiff's overtime hours should have been compensated at a rate of \$42.51
19 (1.5 x \$28.34) plus the pro rata value of meals and lodging per overtime hour.

20 38. Additionally, to the extent Defendants compensated Plaintiff with a
21 double time premium, they paid Plaintiff at the rate of \$47.60 (2 x \$23.80) per double
22 time hour, while Plaintiff's double time hours should have been compensated at the
23 rate of \$56.68 (2 x \$28.34) plus the pro rata value of meals and lodging per double
24 time hour.

25 **Unpaid Overtime Wages.**

26 39. Within the last year before the filing of this action and continuing to the
27 present, and pursuant to company policy and/or practice and/or direction, based on the
28 policies implemented and enforced by Defendants, Defendants regularly and

1 systematically, as a policy and practice, underpaid Plaintiffs and similarly situated
2 employees' overtime.

3 40. As to Plaintiff GARCIA and similarly situated Aggrieved Employees,
4 this claim is premised, in part, on Defendants' requiring Aggrieved Employees to
5 work off the clock.

6 41. Specifically, Aggrieved Employees would be required to spend unpaid
7 time waiting in line for and submitting to security and Covid screenings, as well as
8 Covid tests, which they were required to do before they clocked in. This was
9 compensable time for which Aggrieved Employees were not paid.

10 42. This claim is also premised, in part, on Plaintiffs' allegations of
11 Defendants paying overtime at incorrect hourly rates.

12 43. For example, during the May 1, 2021 to May 7, 2021, pay period, the
13 wage and earning statement Defendants issued Plaintiff GARCIA shows she worked
14 3.4 hours of double overtime, and that her normal hourly rate was \$28.34, but double
15 that amount for double overtime is \$192.71, yet Defendants paid her only \$161.84. In
16 fact, the regular rate of pay was greater than \$28.34 due to the provision of meals and
17 lodging.

18 44. Another example occurred during the May 8, 2021 to May 14, 2021 pay
19 period where Defendants issued Plaintiff GARCIA a wage and earning statement that
20 reported Plaintiff GARCIA working 1.70 hours of double overtime and paying her
21 \$80.92, but at the regular rate of pay of \$28.34 Defendants should have paid her
22 \$96.36.

23 45. Indeed, the regular rate of pay was greater than \$28.34 due to the
24 provision of meals and lodging.

25 46. Additionally, Plaintiffs are informed and believe and based thereon
26 allege that Defendants' overtime payments it paid to Aggrieved Employees
27 unlawfully did not include all forms of remuneration.

28 47. Pursuant to § 49.1.1 of the California Division of Labor Standards and

1 Enforcement Policies and Interpretations Manual, “In California, as with the federal
2 FLSA, overtime is computed based on the regular rate of pay. The regular rate of pay
3 includes many different kinds of remuneration, for example: hourly earnings, salary,
4 piecework earnings, commissions, certain bonuses, *and the value of meals and*
5 *lodging.*” (Emphasis added.)

6 48. Plaintiffs and Aggrieved Employees earned such remuneration, including
7 meals and lodging and such remuneration was not included in their regular rate of pay
8 for purposes of overtime compensation during the relevant pay periods.

9 49. This claim is also premised, in part, on Plaintiffs’ right to pursue all
10 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
11 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

12 50. These are a few of many similar instances where Defendants failed to
13 pay all wages to the Plaintiffs and the Aggrieved Employees.

14 **Unpaid Minimum/Regular Wages.**

15 51. Within the last year before the filing of this action and continuing to the
16 present, and pursuant to company policy and/or practice and/or direction, Defendants,
17 based on the policies implemented and enforced by Defendants, failed to pay
18 Plaintiffs and Aggrieved Employees all their regular/minimum wages, in an amount
19 to be proven at trial.

20 52. The basis for Plaintiffs’ and Aggrieved Employees’ unpaid minimum
21 wage/regular wage claim is based on, among other things, the above alleged policies
22 implemented by Defendants, such as Defendants’ requirement that Plaintiffs and
23 similarly situated Aggrieved Employees engage in compensable work before clocking
24 in, among other things.

25 53. Plaintiffs are informed and believe, and based thereon allege, this claim
26 is also premised on Plaintiffs’ allegations that Aggrieved Employees performed work
27 on public works projects where Defendants were required to pay Aggrieved
28 Employees prevailing wages, yet did not pay such wages or the proper amount of

1 such wages.

2 54. This claim is also premised, in part, on Plaintiffs' right to pursue all
3 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
4 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

5 **Meal and Rests Break Claims.**

6 55. Within the last year before the filing of this action, and pursuant to
7 company policy and/or practice and/or direction, Plaintiffs are informed and believe
8 and therefore allege that Defendants, based on the policies implemented and enforced
9 by Defendants, failed to permit Plaintiffs and Aggrieved Employees to take all of
10 their compliant off-duty meal and rest breaks during the required timeframe as
11 required by law and failed to pay them premium pay in lieu thereof, in an amount to
12 be proven at trial.

13 56. The basis for Plaintiffs' and Aggrieved Employees' meal break claim is
14 based, in part, on a policy implemented by Defendants that required Plaintiff
15 GARCIA and Aggrieved Employees to always remain at the work premises as well as
16 listen and respond to radio calls, instead of giving them an uninterrupted 30-minute
17 break required under California law.

18 57. Many times, in an amount to be proven at trial, Plaintiffs are informed
19 and believe and therefore allege that in cases where Plaintiffs and Aggrieved
20 Employees worked more than five and/or ten hours in a workday, they were deprived
21 their right to take an uninterrupted meal break and Defendants failed to pay them
22 premium pay for their missed or noncompliant meal breaks.

23 58. Plaintiffs' rest break claim is premised on Defendants' policy that
24 required Plaintiff and Aggrieved Employees to work alone or under circumstances
25 that prevented them from taking a meal and rest break because of Defendants'
26 policies requiring workers to be near the migrants they were watching.

27 59. Because of Defendants' policy, Defendants prevented Plaintiffs and
28 Aggrieved Employees from taking all their uninterrupted rest breaks to which they

1 had the right to enjoy in an amount to be proven at trial, and Defendants failed to pay
2 them premium pay as required under California law. (*See Augustus v. ABM Security*
3 *Services* (2016) 2 Cal.5th 257.)

4 60. This claim is also premised, in part, on Plaintiffs' right to pursue all
5 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
6 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

7 **Unreimbursed Work-Related Expense Claims.**

8 61. During all times relevant, and pursuant to company policy and/or
9 practice and/or direction, Defendants required Plaintiffs and, upon information and
10 belief, Aggrieved Employees to use their cell phones and incur various other expenses
11 associated with their work for Defendants.

12 62. Plaintiffs allege that Defendants, via its managers, typically called,
13 texted, and emailed Plaintiffs and the Aggrieved Employees during working hours.

14 63. Plaintiffs and similarly affected Aggrieved Employees disavow any
15 knowledge of written policies allowing them to request reimbursement for such work-
16 related expenses and, as a result, never were paid for said expenses.

17 64. Plaintiffs are informed and believe, and thereupon allege, that
18 Defendants' requirement for employees to use their supplies and equipment to
19 perform their work duties without reimbursement was an attempt to defray the costs
20 onto its employees.

21 65. Defendants passed the cost of doing business onto its employees by
22 requiring, without reimbursement, their employees to purchase equipment, tools, and
23 services necessary to perform work for Defendants.

24 66. This claim is also premised, in part, on Plaintiffs' right to pursue all
25 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
26 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

27 **Erroneous Wage Statements in Violation of Labor Code § 226.**

28 67. During all times relevant, and pursuant to company policy and/or

1 practice and/or direction and continuing to the present, and pursuant to company
2 policy and/or practice and/or direction, Defendants issued confusing and inaccurate
3 wage and earning statements to Plaintiffs, which wage and earning statements failed
4 to identify their correct rates of pay and/or correct gross and net earnings during the
5 applicable pay period.

6 68. Compounding the foregoing error is that Defendants failed to pay
7 Plaintiff and similar Aggrieved Employees according to the statutory requirements of
8 Labor Code § 201.3.

9 69. Further compounding the foregoing error is that Defendants issued
10 Plaintiff and similar Aggrieved Employees paystubs with incorrect rates of pay.

11 70. In addition to the foregoing stand-alone claim under Labor Code § 226,
12 Plaintiffs' paystubs and those of similarly situated employees of Defendants were
13 inaccurate because Defendants failed to pay them all wages, as alleged above,
14 supporting a derivative claim under Labor Code § 226.

15 71. This claim is also premised, in part, on Plaintiffs' right to pursue all
16 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
17 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

18 **Derivative PAGA Claims.**

19 72. During all times relevant, and pursuant to company policy and/or
20 practice and/or direction, Aggrieved Employees did not receive their final paychecks
21 immediately upon involuntary termination or within 72 hours of voluntary separation,
22 Defendants did not pay all final wages at the location of employment, and said final
23 paychecks did not include all wages due to the employee.

24 73. Based on the foregoing misconduct, Defendants issued Plaintiffs
25 erroneous paystubs.

26 74. To date, Plaintiffs are informed and believe, and therefore allege, that
27 Defendants have not paid Aggrieved Employees all wages due and payable, in an
28 amount to be proven at trial in violation of Labor Code § 203 and 256 via PAGA.

1 **ICRAA Claims.**

2 75. On or about April 28, 2021, as part of Defendants' routine practice,
3 policy, and procedure, Defendants required Plaintiff, a job applicant at that time, to
4 sign various forms that purported to allow Defendants to obtain a consumer
5 investigative report on the Plaintiff via a third party.

6 76. Defendants' purported permission to conduct the foregoing investigative
7 consumer report was based, in part, on an 18-page document consisting of various
8 form Defendants required Plaintiff to sign. Attached hereto and marked as **Exhibit 1**
9 is a true and correct copy of the foregoing form, the contents of which are
10 incorporated herein by reference as though alleged herein.

11 77. Plaintiff maintains **Exhibit 1** violates California law because it
12 unlawfully contains, for example, a "FCRA Summary of Rights," none of which are
13 relevant to the disclosure requirements under the ICRAA. (See **Ex. 1**.)

14 78. Further, **Exhibit 1** is not a "document that consists solely of the
15 disclosure" within the meaning of Civ. Code § 1786.16, subd. (a)(2)(B) because it is
16 believed it was part of an 18-page document presented electronically to the Plaintiff
17 for review and electronic signature.

18 79. Moreover, there was no apparent "box to check" within the meaning of
19 Civ. Code § 1786.16, subd. (b)(1) for Plaintiff to check to request a copy of the
20 Report.

21 80. Further, Plaintiff maintains **Exhibit 1** unlawfully contains an ongoing
22 authorization (also known as an evergreen provision) that provides:

23 The Company may obtain consumer reports from any outside organization
24 throughout the course of your to work.

25 **(Ex. 1, p. 12.)**

26 81. Plaintiff maintains the foregoing paragraph in **Exhibit 1** violates Cal.
27 Civ. Code § 1786.16(a)(2) (requiring that a written disclosure be provided "at any
28 time" an investigative consumer report is sought, subject to narrow exceptions)

1 because it contains an “evergreen consent” provision that violates the requirement
2 that Defendants provide Plaintiff with written disclosures and obtain written
3 authorization each time an investigative consumer report is sought.

4 82. Civil Code § 1786.16, subd. (d) further provides, “Those persons
5 described in subdivision (d) of Section 1786.12 constitute the *sole and exclusive* class
6 of persons who may cause an investigative consumer report to be prepared.”
7 (Emphasis added.)

8 83. Civil Code § 1786.12, in relevant part, moreover provides, “An
9 investigative consumer reporting agency shall only furnish an investigative consumer
10 report. . . To a person that it has reason to believe: (1) Intends to use the information
11 for *employment purposes*.” (Emphasis added.)

12 84. Civil Code § 1786.2, subd. (f) defines the term “*employment purposes*,
13 when used in connection with an investigative consumer report, means a report used
14 for the purpose of evaluating a consumer for employment, promotion, reassignment,
15 or retention *as an employee*.” (Emphasis added.)

16 85. Despite Civil Code §§ 1786.12 and 1786..16, subd. (d) which expressly
17 prohibit anyone but the employer from requesting investigative consumer reports on
18 job applicants, **Exhibit 1** demonstrates that “Quest Group Search, LLC,” not the
19 employer (i.e., Defendant QUEST GROUP CONSULTING LLC) procured Plaintiff’s
20 report.

21 86. If a factfinder determines that Defendant QUEST GROUP SEARCH,
22 LLC was not Plaintiff’s employer (a contention that appears obvious since its name is
23 not on Plaintiff GARCIA’s wage and earning statements), Defendant QUEST
24 GROUP CONSULTING LLC and Defendant QUEST GROUP SEARCH also
25 violated Civil Code § 1786.16 because it had no legal basis to procure a consumer
26 report on the Plaintiff because it was not Plaintiff’s employer.

27 87. Further, § 1786.20 of the Civ. Code governs what privacy policies a
28 consumer reporting agency must maintain, where they must be published, and what

1 specifically its “privacy statement” must provide when doing business in California
2 (i.e., furnishing reports on California job applicants), yet the evidence appears to
3 demonstrate that the apparent consumer reporting agency that Defendants hired (i.e.,
4 Verified First) lacked having a lawful privacy policy in effect when Plaintiff
5 GARCIA’s report was procured.

6 88. By law, before an employer can procure a report on an employee or job
7 applicant, the employer must certify to the furnishing agency that it (the employer)
8 complied, and will continue to comply, with various requirements of the ICRAA. Civ.
9 Code §1786.16(a)(4).

10 89. Plaintiff GARCIA is informed and believes there is no evidence of
11 certifications whatsoever from the Defendants as required under the ICRAA.

12 90. Accordingly, Plaintiffs are informed and believe, and based thereon
13 allege, that Defendants violated the ICRAA by procuring a Report without complying
14 with the certification requirements set forth in the FCRA and the ICRAA.

15 91. These are a few of many reasons Defendants violated the ICRAA, the
16 exact amount and number of reasons to be proven at trial and for each reason of
17 which Plaintiff seeks statutory damages. (*Ballard v. Pac. Logistics Corp.* (C.D.Cal.
18 Feb. 25, 2019, No. CV 18-10320 DSF (JCx)) 2019 U.S.Dist.LEXIS 62121 [plaintiff
19 may recover statutory damages for each violation of ICRAA.]

20 **REPRESENTATIVE ACTION (i.e., PAGA) CLAIMS**

21 92. The duties and business activities of the Aggrieved Employees were
22 essentially the same as the duties and activities of the Plaintiff described above.

23 93. This is a wage and hour representative action filed pursuant to PAGA, §§
24 2698, 2699 that generally consists of the following group:

25 **All current or former nonexempt employees who worked**
26 **for the Defendants in the state of California from October**
27 **21, 2020 to the present.**

28 94. All members of the represented group will be referred to as the

1 “Aggrieved Employees.”

2 95. The “Representative Period” means from **October 21, 2020** to the
3 present.

4 96. Plaintiff further alleges, on information and belief, that Aggrieved
5 Employees, did not receive all wages due at the time their employment ended with
6 Defendants.

7 97. On information and belief, Defendants’ current and former employees
8 were subject to wage and hour violations by Defendants, including failing to be paid
9 for all wages due.

10 98. California law provides that an employee may file an action against an
11 employer for penalties in connection with violations of the Labor Code and Wage
12 Orders provided the aggrieved employee file an action on behalf of him or herself and
13 similarly situated current and former employees.

14 99. At all material times, Defendants and DOES 1 through 50 were and/or
15 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
16 Employees’ employer, within the meaning of California Labor Code § 558, who
17 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
18 Labor Code or any provision regulating hours and days of work in any Order of the
19 Industrial Welfare Commission and, as such, are subject to penalties for each
20 underpaid employee as set for in Labor Code § 558.

21 100. As set forth in further detail below, based on the analysis and
22 investigation of the Plaintiffs’ claims, Plaintiffs’ attorneys sent letters to the
23 California Labor and Workforce Development Agency (hereinafter referred to as
24 “LWDA”) and to Defendants informing Defendants of his claims and his intent to
25 pursue litigation.

26 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

27 101. As to penalty claims under the Labor Code Private Attorney General
28 Act, on **October 21, 2021**, Plaintiffs, *et al.*, via counsel, sent correspondence to the

1 LWDA and Defendants via certified U.S. Mail indicating that Plaintiffs are pursuing
2 the claims alleged in this Complaint.

3 102. By the time this Complaint is amended, the statutory period under the
4 PAGA for Plaintiffs will have expired from the date of letter alleged above and the
5 LWDA will not have serves Plaintiffs with notice of its intent to assume jurisdiction
6 over the applicable penalty claims and did not provide notice as set forth in Labor
7 Code § 2699.3 (a)(2)(A) within the statutory period.

8 103. Therefore, Plaintiffs will have exhausted Plaintiffs' administrative
9 remedies to pursue claims and remedies as authorized by the PAGA.

10 104. The Causes of Action alleged herein are appropriately suited for a
11 Representative Action under the PAGA (Labor Code § 2698, *et seq.*) because:

- 12 a. This action involves allegations of violations of provisions of the
13 California Labor Code that provide for a civil penalty to be
14 assessed and collected by the LWDA or any departments,
15 divisions, commissions, boards, agencies, or employees;
- 16 b. Plaintiffs are "aggrieved employees" because Plaintiffs were
17 employed by the alleged violator and had one or more of the Labor
18 Code violations alleged on this Complaint committed against them;
19 and
- 20 c. Plaintiffs have satisfied the procedural requirements of Labor Code
21 § 2699.3, as set forth above.
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1 **FIRST CAUSE OF ACTION**

2 **Individual and Representative Claim for PAGA Penalties**
3 **Under California Labor Code §§ 2698, 2699, *et seq.* for**
4 **Failure to Pay Local/State Minimum/Regular/Prevailing Wages**
5 **in Violation of California Labor Code § 1194, 1197, 1771, 1774, 1776, 1811, and**
6 **1815, 1198, and the applicable Industrial Welfare Commission (“IWC”)**
7 **Wage Order, and Where applicable the Local Min. Wage Ordinance**
8 **(Against all Defendants)**

9 105. Plaintiffs re-allege and incorporate by reference the foregoing allegations
10 as though set forth herein.

11 106. Pursuant to Labor Code §§ 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
12 1815, and 1198, it is unlawful for a California employer to suffer or permit an
13 employee to work without paying wages for all hours worked, as required by the
14 applicable Industrial Welfare Commission (“IWC”) Wage Order.

15 107. During all times relevant, Defendants were required to pay Plaintiffs and
16 other members of the Aggrieved Employees their respective hourly rate for all hours
17 worked and/or minimum wages and/or prevailing wages per state law or applicable
18 local law.

19 108. During all times relevant, at least one of the IWC Wage Orders applied
20 to Plaintiffs’ employment with Defendants.

21 109. Pursuant to the applicable Wage Order, “hours worked” include the time
22 during which an employee is “suffered or permitted to work, whether or not required
23 to do so.”

24 110. Under state and, where appropriate, local law, every employer must pay
25 each nonexempt employee minimum wages. (*See, e.g.,* Los Angeles County
26 Minimum Wage Ordinance (Chap. No. 8.100.010, *et seq.*); Sacramento Minimum
27 Wage Ordinance, etc.)

28 111. During the proposed Aggrieved Employees Period and based on the

1 misconduct alleged above, Defendants did not pay Plaintiffs and Aggrieved
2 Employees minimum/regular wages for all hours suffered or permitted to work in
3 violation of state and/or local law and/or prevailing wage law.

4 112. Labor Code § 1194 subdivision (a) permits an action to recover wages
5 because of the payment of a wage less than the minimum wage “applicable to the
6 employee” including attorneys’ fees, costs, and interest.

7 113. At all material times, Defendants were and/or are Aggrieved
8 Employees’ employers or persons acting on behalf of Aggrieved Employees’
9 employer, within the meaning of California Labor Code §§ 558 and 558.1, who
10 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
11 Labor Code or any provision regulating hours and days of work in any Order of the
12 Industrial Welfare Commission and, as such, are subject to civil penalties for each
13 underpaid employee as set for in Labor Code § 558.

14 114. In committing the violations of state law as herein alleged, Plaintiffs are
15 informed and believe based there upon allege that Defendants have knowingly and
16 willfully refused to perform their obligations to compensate Aggrieved Employees for
17 all wages earned and all hours worked.

18 115. As a direct result, Aggrieved Employees have suffered and continue to
19 suffer, substantial losses related to the use and enjoyment of such compensation,
20 wages, lost interest on such monies and expenses and attorneys’ fees in seeking to
21 compel Defendants to fully perform their obligations under state and/or local law.

22 116. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of
23 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per
24 pay period for the initial violation and two hundred (\$200.00) for each aggrieved
25 employee per pay period for each subsequent violation in which Defendants violated
26 the minimum wage and/or regular wage provisions of the Labor Code, including but
27 not limited to §§ 216, 218, 218.5, 558, 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
28 1815, 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable penalty is

1 all in an amount to be shown according to proof at trial.

2 117. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
3 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and
4 costs incurred herein.

5 **SECOND CAUSE OF ACTION**

6 **Individual and Representative Claim for PAGA Penalties**

7 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

8 **Failure to Pay State Overtime and/or Double-Time Compensation**

9 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5,**

10 **1182.12, 1194, 1194.2, 1197, 1197.1, 1771, 1774, 1776, 1811, 1815, 1198, and the**

11 **Applicable IWC Wage Order**

12 (Against all Defendants)

13 118. Plaintiffs re-allege and incorporate by reference the foregoing
14 allegations as though set forth herein.

15 119. California law requires an employer to pay each employee for the actual
16 hours worked. (*See* Cal. Labor Code §§ 200, 226.)

17 120. During all times relevant, one or more of the IWC Wage Orders applied
18 to Plaintiffs' employment with Defendants.

19 121. Pursuant to § 2(K) of the applicable Wage Order(s), including Wage
20 Order 15, "hours worked" include the time during which an employee is "suffered or
21 permitted to work, whether or not required to do so."

22 122. Pursuant to Labor Code §§ 510, 1194, 1194.2, and § 3 of the applicable
23 Wage Order(s), for each hour (or fraction thereof) an employee works up to forty (40)
24 hours in a week and eight (8) hours in a day, the employer must pay the employee's
25 regular hourly wage. For each hour (or fraction thereof) an employee works over forty
26 (40) hours in a week or more than eight (8) hours in a workday the employer must
27 pay the rate of one and a half times the employee's regular hourly wage.

28 123. For each hour (or fraction thereof) an employee works more than

1 twelve (12) hours in one day or more than eight (8) hours a day on the seventh
2 consecutive day of work, the employer must compensate the employee at the rate of
3 no less than twice the regular rate of pay for that employee.

4 124. During all times relevant, and pursuant to company policy and/or
5 practice and/or direction, Defendants required Plaintiffs and the Aggrieved
6 Employees to work more than 40 hours per week and/or eight hours in a workday and
7 Defendants did not pay Plaintiff and the Aggrieved Employees all overtime
8 compensation to which they should have received.

9 125. According to § 49.1.1 of the California Division of Labor Standards and
10 Enforcement Policies and Interpretations Manual, “In California, as with the federal
11 FLSA, overtime is computed based on the regular rate of pay. The regular rate of pay
12 includes many different kinds of remuneration, for example: hourly earnings, salary,
13 piecework earnings, commissions, *certain bonuses*, and the value of meals and
14 lodging.” (Emphasis added.)

15 126. As alleged herein, Defendants failed to pay Aggrieved Employees all
16 overtime to which they had a right to receive.

17 127. In committing the violations of state law as herein alleged, Defendants
18 have knowingly and willfully refused to perform their obligations to compensate
19 Aggrieved Employees for all wages earned and all hours worked.

20 128. At all material times, Defendants were and/or are Aggrieved Employees’
21 employers or persons acting on behalf of Aggrieved Employees’ employer, within the
22 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
23 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
24 regulating hours and days of work in any Order of the Industrial Welfare Commission
25 and, as such, are subject to penalties for each underpaid employee as set for in Labor
26 Code § 558.

27 129. In committing the violations of state law as herein alleged, Defendants
28 have knowingly and willfully refused to perform their obligations to compensate

1 Aggrieved Employees for all wages earned and all hours worked.

2 130. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
3 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
4 period for the initial violation and two hundred (\$200.00) for each aggrieved
5 employee per pay period for each subsequent violation in which Defendants violated
6 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558
7 and 1194, the exact amount of the penalties sought is in an amount to be shown
8 according to proof at trial.

9 131. Pursuant to Labor Code § 2699, Plaintiffs seek to recover from
10 Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein.

11 **THIRD CAUSE OF ACTION**

12 **Individual and Representative Claim for PAGA Penalties**

13 **Under California Labor Code §§ 2698, 2699, *et seq.* for** 14 **Failure to Timely Pay Earned Wages in Violation of California** 15 **Labor Code §§ 201, 201.3, 202, 203, 204, 204b,** 16 **218.5, 218.6, 256, 1198, and the applicable Wage Order**

17 (Against all Defendants)

18 132. Plaintiffs re-allege and incorporate by reference the foregoing allegations
19 as though set forth herein.

20 133. Pursuant to Labor Code § 201, "If an employer discharges an employee,
21 the wages earned and unpaid at the time of discharge are due and payable
22 immediately."

23 134. Pursuant to Labor Code § 201.3, temporary employment agencies must
24 pay temporary employees weekly.

25 135. Pursuant to Labor Code § 202, "If an employee not having a written
26 contract for a definite period quits his or her employment, his or her wages shall
27 become due and payable not later than 72 hours thereafter, unless the employee has
28 given 72 hours previous notice of his or her intention to quit, in which case the

1 employee is entitled to his or her wages at the time of quitting.”

2 136. Labor Code § 203 provides, in pertinent part: “If an employer willfully
3 fails to pay, without abatement or reduction, ... any wages of an employee who is
4 discharged or who quits, the wages of the employee shall continue as a penalty from
5 the due date thereof at the same rate until paid or until an action therefore is
6 commenced; but the wages shall not continue for more than 30 days. ...”

7 137. Pursuant to Labor Code § 204, “all wages ... earned by any person in
8 any employment are due and payable twice during each calendar month, on days
9 designated in advance by the employer as the regular paydays.”

10 138. Pursuant to Labor Code § 204b, “Labor performed by a weekly-paid
11 employee during any calendar week and prior to or on the regular payday shall be
12 paid for not later than the regular payday of the employer for such weekly-paid
13 employee falling during the following calendar week.”

14 139. Defendants did not properly pay Plaintiff and Aggrieved Employees
15 pursuant to the requirements of Labor Code §§ 201, 202, 204 and/or 204b and thereby
16 Plaintiffs seek the unpaid wages.

17 140. To date, Defendants have not paid terminated Aggrieved Employees all
18 earned wages as required by law.

19 141. At all material times, Defendants and DOES 1 through 50 were and/or
20 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
21 Employees’ employer, within the meaning of California Labor Code § 558, who
22 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
23 Labor Code or any provision regulating hours and days of work in any Order of the
24 Industrial Welfare Commission and, as such, are subject to penalties for each
25 underpaid employee as set for in Labor Code § 558.

26 142. In committing the violations of state law as herein alleged, Defendants
27 have knowingly and willfully refused to perform their obligations to compensate
28 Aggrieved Employees for all wages earned and all hours worked.

1 143. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
2 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
3 period for the initial violation and two hundred (\$200.00) for each aggrieved
4 employee per pay period for each subsequent violation in which Defendants violated
5 Labor Code §§ 201, 202, 203, 204, 204b, and 256.

6 144. As alleged above, Defendants have deprived Plaintiffs and Aggrieved
7 Employees of their rightfully earned wages as a direct and proximate result of
8 Defendants' failure and refusal to pay said compensation and for the reasons alleged
9 in this Complaint

10 145. Plaintiffs seek all waiting time penalties, interest, attorneys' fees, costs,
11 damages, and other remedies pursuant to the PAGA in an amount to be proven at
12 trial.

13 **FOURTH CAUSE OF ACTION**

14 **Individual and Representative Claim for PAGA Penalties**

15 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

16 **Failure to Comply with the Meal and Rest Break Requirements Under Labor** 17 **Code §§ 226.7, 512, 1198, and the applicable IWC Wage Order**

18 (Against all Defendants)

19 146. Plaintiffs re-allege and incorporate by reference the foregoing allegations
20 as though set forth herein.

21 147. Based on the misconduct alleged in this Complaint, Defendants failed to
22 pay Plaintiff and Aggrieved Employees premium pay for all their missed meal and
23 rest breaks and failed to comply with Labor Code §§ 226.7, 512, and 1198.

24 148. Because of Defendants' illegal pay practices, said Defendants failed to
25 pay Plaintiff and Aggrieved Employees for all meal and rest breaks despite their
26 requirement under California law and, as such, all culpable Defendants are required to
27 pay Plaintiff and Aggrieved Employees for rest break and/or meal break premium
28 wages.

1 149. Defendants also failed to provide Plaintiff, and Aggrieved Employees,
2 legally-compliant meal and rest periods, or compensation in lieu thereof, during their
3 employment by said Defendants.

4 150. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
5 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
6 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
7 pay period for each subsequent violation in which all culpable Defendants violated
8 Cal. Labor Code §§ 226.7 and 512, the exact amount of the applicable penalty is all in
9 an amount to be shown according to proof at trial.

10 151. Wherefore, Plaintiffs request all remedies available to them and to the
11 Aggrieved Employees pursuant to the PAGA.

12 **FIFTH CAUSE OF ACTION**

13 **Individual and Representative Claim for PAGA Penalties**
14 **Under California Labor Code §§ 2698, 2699, *et seq.* for**
15 **Violations of California Labor Code §§ 226, 226.3, 226.6, 1198,**
16 **and the applicable IWC Wage Order**
17 **(Against all Defendants)**

18 152. Plaintiffs re-allege and incorporate by reference the foregoing allegations
19 as though set forth herein.

20 153. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
21 pertinent part, that every employer shall, “semimonthly or at the time of each
22 payment of wages, shall furnish to his or her employees, either as a detachable part of
23 the check, draft, or voucher paying the employee's wages, or separately if wages are
24 paid by personal check or cash, an accurate itemized statement in writing showing (1)
25 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
26 piece-rate units earned and any applicable piece rate if the employee is paid on a
27 piece-rate basis, (4) all deductions, provided that all deductions made on written
28 orders of the employee may be aggregated and shown as one item, (5) net wages

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
2 name of the employee and only the last four digits of his or her social security
3 number..., (8) the name and address of the legal entity that is the employer. . . , and
4 (9) all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee and, beginning July 1,
6 2013, if the employer is a temporary services employer as defined in Section 201.3,
7 the rate of pay and the total hours worked for each temporary services assignment. . . .”
8 (Labor Code § 226 subdivision (a).)

9 154. Upon information and belief, during all times relevant to this action,
10 Defendants did not provide accurate wage statements throughout the Aggrieved
11 Employees Period and, thus, Plaintiffs assert this claim both as a stand-alone claim
12 and derivative of their unpaid wage claims.

13 155. On numerous occasions, an exact amount by which will be proven at
14 trial, Defendants violated various provisions of § 226, including but not limited to
15 subdivisions (a)(1), (a)(2), (a)(4), (a)(5), and (a)(9) by failing to provide Plaintiffs and
16 the Aggrieved Employees accurate itemized statement in writing accurately showing
17 gross wages earned, total hours worked by the employee, net wages earned, rates of
18 pay, among other things.

19 156. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
20 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
21 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
22 pay period for each subsequent violation in which all culpable Defendants violated
23 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
24 of the applicable penalty is all in an amount to be shown according to proof at trial.

25 157. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
26 seek to recover from Defendants, and each of them, penalties, attorneys’ fees, and
27 costs incurred herein under §§ 226, 226.3, and 226.6 in an amount to be proven at
28 trial.

1 **SIXTH CAUSE OF ACTION**

2 **Individual and Representative Claim for PAGA Penalties**
3 **For Failure to Maintain Required Records in Violation of California**
4 **Labor Code §§ 1174 and the Applicable Wage Order and/or § 1198**
5 **(Against All Defendants)**

6 158. Plaintiffs re-allege and incorporate by reference the foregoing allegations
7 as though set forth herein.

8 159. Section 7 of the typical Wage Order requires every employer to maintain
9 time and payroll records.

10 160. Plaintiffs are informed and believe and based thereon alleges that during
11 all times relevant, Defendants failed to comply with § 7 of the applicable IWC Orders
12 and with Labor Code § 1174 by failing to maintain certain records which employers
13 are required to maintain, including but not limited to, an accurate record indicating
14 the number hours worked by the Plaintiffs.

15 161. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
16 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
17 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
18 pay period for each subsequent violation in which all culpable Defendants violated
19 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
20 of the applicable penalty is all in an amount to be shown according to proof at trial.

21 162. For the reasons alleged herein, Plaintiffs seek all available remedies
22 pursuant to the PAGA in an amount to be proven at trial including but not limited to
23 penalties, attorneys' fees, costs, and interest pursuant to law.
24
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SEVENTH CAUSE OF ACTION

Individual and Representative Claim for PAGA Penalties

Under California Labor Code §§ 2698, 2699, *et seq.* for

**Failure to Failure to Indemnify/Reimburse Business Expenses in Violation of
California Labor Code §§ 2802, 1198, and the Applicable Wage Order**

(Against all Defendants)

163. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

164. California Labor Code § 2802 requires employers to indemnify their employees for expenses and losses incurred while discharging their duties or obedience to the directions of their employer.

165. California Labor Code § 2804 prohibits waiver of this statutory right.

166. The Plaintiffs and the Aggrieved Employees incurred losses in obedience to the directions of Defendants including but not limited to cell phone expenses.

167. Upon information and belief, Defendants maintained no policy of reimbursement of such expenses, and refused to reimburse said expenses.

168. Defendants required Plaintiffs and Aggrieved Employees to purchase and provide their own equipment, services, and supplies to work for Defendants.

169. As a direct result of Defendants' violations of California Labor Code § 2802, the Plaintiffs and Aggrieved Employees suffered and continue to suffer substantial losses related to unpaid expenses, the use and enjoyment of monies owed, lost interest on monies owed, and attorneys' fees in an amount to be proven at the time of trial.

170. Defendants derived an unjust and inequitable economic benefit in failing to comply with the law regarding indemnification and reimbursement of employees.

171. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per

1 pay period for each subsequent violation in which all culpable Defendants violated
2 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
3 of the applicable penalty is all in an amount to be shown according to proof at trial.

4 172. For the reasons alleged herein, Plaintiffs seek all available remedies
5 pursuant to the PAGA in an amount to be proven at trial including but not limited to
6 penalties, attorneys' fees, costs, and interest pursuant to law.

7 **EIGHTH CAUSE OF ACTION**

8 **Individual and Representative Claim for PAGA Penalties**

9 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

10 **Individual and Representative Claim for PAGA Penalties and Wage**

11 **Under California Labor Code §§ 2698, 2699, *et seq.* for Violations of California**

12 **Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5, 201.7, 203.1,**
13 **203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d)**
14 **of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2,**
15 **230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c)**
16 **of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403, subdivision (b) of**
17 **Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551, 552, 601, 602,**
18 **603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021,**
19 **1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the applicable Wage**
20 **Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290, 1292, 1293,**
21 **1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309,**
22 **1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section**
23 **1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,**
24 **1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651,**
25 **and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2806,**
26 **and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and**
27 **6399.7 and the Applicable Wage Order**

28 **(Against all Defendants)**

1 173. Plaintiffs re-allege and incorporate by reference the foregoing allegations
2 as though set forth herein.

3 174. This claim is also premised on Plaintiffs' right to pursue all Labor Code
4 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
5 *USA, Inc.* (2018) 23 Cal.App.5th 745.

6 175. Plaintiffs have sent their written notice to the LWDA and Defendants of
7 the specific sections of the California Labor Code Defendants violated and continue
8 to violate.

9 176. Plaintiffs will file an amended complaint once they have exhausted their
10 administrative remedies and are entitled to pursue claims and remedies as authorized
11 by PAGA.

12 177. Pursuant to Labor Code § 2699, any provision of the Labor Code that
13 provides for a civil penalty to be assessed and collected by the LWDA or any of its
14 departments, divisions, commissions, boards, agencies or employees for violation of
15 the code may, as an alternative, be recovered through a civil action brought by an
16 aggrieved employee on behalf of himself or herself and other current or former
17 employees pursuant to the procedures specified in Labor Code § 2699.3.

18 178. Plaintiffs are informed and believe, and based thereon allege, that
19 because of the acts alleged above and Defendants' violations of the Labor Code
20 provisions alleged herein, Plaintiffs are entitled to penalties under Labor Code §§
21 2698 and 2699.

22 179. Plaintiffs are "aggrieved employees" because Plaintiffs were employed
23 by the alleged violator and had one or more of the alleged violations committed
24 against Plaintiffs, and therefore are properly suited to represent the interests of other
25 current and former Represented Employees.

26 180. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
27 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
28 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,

subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

181. Labor Code § 558 establishes a civil penalty as follows: Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission (including the “Hours and Days of Work” section of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) wages recovered pursuant to this section shall be paid to the affected employee.

182. Plaintiffs seek penalties for Defendants’ conduct as alleged herein as permitted by law.

183. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover

1 attorney's fees, costs, civil penalties, and wages on behalf of Plaintiff and other
2 current and former Represented Employees as alleged herein in an amount to be
3 shown according to proof at trial and within the jurisdictional limits of this Court.

4 **NINTH CAUSE OF ACTION**

5 **Individual Claims for**

6 **Violations of the California Investigative Consumer**

7 **Reporting Agencies Act (Civ. Code, § 1786, *et seq.*)**

8 (Against Defendants QUEST GROUP CONSULTING LLC,

9 QUEST GROUP SEARCH, LLC, and DOES 1-50)

10 184. Pursuant to California Civ. Code § 1786, *et seq.*, it is presumptively
11 unlawful for a consumer reporting agency to furnish an investigative consumer
12 report for employment purposes.

13 185. The ICRAA requires that, before procuring a consumer report on an
14 individual for employment purposes, the employer must comply with all the
15 following:

- 16 (A) The person procuring or causing the report to be made has a
permissible purpose, as defined in Civ. Code § 1786.12.
- 17 (B) The person procuring or causing the report to be made provides a clear
18 and conspicuous disclosure in writing to the consumer at any time
before the report is procured or caused to be made in a document that
19 consists solely of the disclosure, that:
 - 20 (i) An investigative consumer report may be obtained.
 - 21 (ii) The permissible purpose of the report is identified.
 - 22 (iii) The disclosure may include information on the consumer's
character, general reputation, personal characteristics, and mode of living.
 - 23 (iv) Identifies the name, address, and telephone number of the
investigative consumer reporting agency conducting the investigation.
 - 24 (v) Notifies the consumer in writing of the nature and scope of the
investigation requested, including a summary of the provisions of Civ.
Code § 1786.22.
 - 25 (vi) Notifies the consumer of the Internet Web site address of the
investigative consumer reporting agency identified in clause (v), or, if the
agency has no Internet Web site address, the telephone number of the
26 agency, where the consumer may find information about the investigative
reporting agency's privacy practices, including whether the consumer's
27 personal information will be sent outside the United States or its territories
and information that complies with subdivision (d) of Civ. Code §
28 1786.20. This clause shall become operative on January 1, 2012.

1 (Civ. Code § 1786.16, subd. (a)(2)(B).)

2 186. Plaintiff alleges Defendants violated Civ. Code § 1786.16 because the
3 disclosure form Defendant required Plaintiff to sign failed to comply with Civ. Code
4 § 1786.16, *et seq.* for the reasons specified in this Complaint and according to proof at
5 trial. (See **Ex. 1.**)

6 187. Plaintiff also alleges Defendants violated the other aspects of the ICRAA
7 as alleged above.

8 188. With respect to each of the aforementioned violations of the ICRAA
9 provisions and pursuant to Civ. Code § 1786.50(a)(1), Plaintiff seeks to recover
10 statutory damages in the amount not less than \$10,000 for each violation due to
11 Defendants' failure to comply with the requirements imposed by Civ. Code §
12 1786.16, all in an amount to be proven at trial.

13 189. Plaintiff seeks recovery costs of suit with reasonable attorneys' fees in an
14 amount as the Court may allow, but not to exceed \$75,000 in the aggregate for all
15 violations, remedies, claims, costs, and attorneys' fees recovered included.

16 **TENTH CAUSE OF ACTION**

17 **Individual and Representative Claim for PAGA Penalties**

18 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

19 **Failure to Provide Seating in Violation of**

20 **California Labor Code 1198, and the Applicable Wage Order**

21 (Against all Defendants)

22 190. Plaintiffs re-allege and incorporate by reference the foregoing allegations
23 as though set forth herein.

24 191. California Labor Code § 1198 makes it illegal to employ an employee
25 under conditions of labor that are prohibited by the applicable wage order.

26 192. California Labor Code § 1198 requires that "... the standard conditions
27 of labor fixed by the commission shall be the ... standard conditions of labor for
28 employees. The employment of any employee ... under conditions of labor

1 prohibited by the order is unlawful.”

2 193. The applicable wage order provides that “[a]ll working employees shall
3 be provided with suitable seats when the nature of the work reasonably permits the
4 use of seats.”

5 194. The applicable wage order also provides that “[w]hen employees are not
6 engaged in the active duties of their employment and the nature of the work requires
7 standing, an adequate number of suitable seats shall be placed in reasonable proximity
8 to the work area and employees shall be permitted to use such seats when it does not
9 interfere with the performance of their duties.”

10 195. The nature of Plaintiffs’ job duties permitted them to be seated.

11 196. As one example, many Aggrieved Employees, including Plaintiff,
12 worked on the night shift, when the children in their care were sleeping.

13 197. Aggrieved Employees on the night shift who were charged with
14 watching the sleeping children were more than capable of performing their duties
15 while seated.

16 198. Additionally, many Aggrieved Employees who worked in the day shift
17 were able to perform their duties while seated.

18 199. Furthermore, for Aggrieved Employees whose work duties occasionally
19 required standing, there was not an adequate number of suitable seats in reasonable
20 proximity to the work area to permit employees to use such seats when doing so
21 would not interfere with the performance of their duties.

22 200. Defendants violated California Labor Code § 1198 and the applicable
23 wage order because Plaintiffs were not permitted to sit, even if they were not engaged
24 in active duties.

25 201. Plaintiffs were not permitted to sit, even when it would not interfere with
26 the performance of their duties, nor were they provided with suitable seats.

27 202. Pursuant to the civil penalties provided for in California Labor Code §§
28 2699 (f) and (g), Defendants are liable for civil penalties of one hundred dollars

1 (\$100) for each aggrieved employee per pay period for the initial violation and two
2 hundred dollars (\$200) for each aggrieved employee per pay period for each
3 subsequent violation, plus costs and attorneys' fees for violation of California Labor
4 Code § 1198.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

7 **On the First through Eighth, and Tenth Causes of Action:**

- 8 1. That the Court find that Defendants' violations as described above were and
9 are willful;
- 10 2. For all remedies available to Plaintiff under the applicable Industrial Welfare
11 Commission Order including but not limited to Wage Order Numbers 4-2001,
12 5-2001, 15-2001, and the Labor Code via § 2698, *et seq.* including an award
13 of attorneys' fees, costs, interest, liquidated damages, damages, and penalties
14 according to proof to the extent permitted by law;
- 15 3. For maximum civil penalties available under the Labor Code and applicable
16 Wage Order as described more particularly in this Complaint, representative
17 PAGA claims as set forth in Labor Code § 558;
- 18 4. That Plaintiff and/or Aggrieved Employees be awarded reasonable attorneys'
19 fees where available by law, including but not limited to pursuant to Labor
20 Code §§ 2698, *et seq.*, Code of Civil Procedure § 1021.5, and/or other
21 applicable laws; and
- 22 5. For such other and further relief as this Court may deem proper and just.

23 **On the Ninth Cause of Action:**

- 24 1. Pursuant to Civ. Code § 1786.50, an award of statutory damages to
25 Plaintiff in the amount of \$10,000 for each violation;
- 26 2. For an order declaring that Defendants violated the rights of Plaintiff
27 under the ICRAA;
- 28 3. For an award of costs of suit incurred, including expenses and reasonable

1 attorneys' fees and costs allowed under all applicable provisions of law;

2 4. For prejudgment and post judgment interest on all due amounts under the
3 ICRAA and Civil Code §§ 3287, 3288, 3289 and any other applicable statutes; and

4 5. For such other and further relief as the Court deems proper.

5 Dated: October 20, 2021

Law Office of Thomas D.
6 Rutledge

7 By: *Thomas D. Rutledge* _____
8 /s/Thomas D. Rutledge, Esq.
9 Attorneys for Plaintiffs

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